IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case
Date of decision: 2nd March, 2006

S.T.R. No. 46 of 2003
(Old No. 826/91)

The Commissioner, Sales Tax
U.P., Lucknow. ..... Applicant/revionist

Versus

S/S Executive Engineer
Abhiyantran Seva, Almora .....Opposite Party/Respondent

Learned Standing Counsel for the revisionist.
Shri R.R. Agarwal, learned counsel for the respondent.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Hon. Mr. Justice Prafulla C. Pant)

Date: 02.03.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.T.R. No. 46 of 2003

The Commissioner, Sales Tax
U.P., Lucknow. .....Applicant/revisionist

Versus

S/S Executive Engineer
Abhiyantran Seva, ALmora .....Opposite Party/Respondent

Learned Standing Cousnel for the revisionist.
Shri R.R. Agarwal, learned counsel for the respondent.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the parties.

2. The question of law raised in this revision is as under:-

Whether in the facts and circumstances of the case, the Sales Tax Tribunal, has erred in law in setting aside the penalty under Section 15 A (1)(e) of U.P. Sales Tax Act, 1948, even though the dealer had failed to pay the assessed tax without any reasonable cause?

2. The asseessee/respondent, is none but Executive Engineer, Rural Engineering Service of the Government. The penalty has been imposed by the Assessing Authority of Sales Tax Department on another Department of the Government, on the ground that the respondent/Government Department, failed to pay tax for the cement and material supplied to the contractor for its work. This relates to the assessment year 1981-82 and the impugned order dated 20.02.1991, is passed by the Sales Tax Tribunal, Haldwani, in Second Appeal,

preferred by the respondent/Government Department, challenging the order of the Sales Tax Department.

3. Perusal of the record, shows that under Clause (11) of the agreement between the respondent/Government Department and its contractor was that the cement and material would be supplied by the concerned Department and it can be lifted only under the permission of the Executive Engineer. Not only this, the unused will be returned by the contractor to the department concerned. Such kind of supply by a Government Department to its contractor for its work cannot be said to be a sale within the meaning of Section 2 (h) of U.P. Sales Act, 1948, unless the price is paid by the contractor for it. In the above circumstances, there was no justification on the part of the Assessing Authority to impose the penalty on the respondent/Government Department, as it cannot be said that the non-payment of tax was without any reasonable cause.

4. Therefore, this Court is in full agreement with the impugned judgment of the tribunal. In the case of ***Commissioner Sales Tax Vs. Executive Engineer, Anushandhan Niyojan Khand I 2005 (2) U.D. 538,*** *this Court has already expressed the view that such material supplied to the contractor by the Government* Department, is not sale.

5. For the reasons as discussed above, the revision has no force and the same is dismissed in limine.

(Prafulla C. Pant, J.)

Dt: 2nd March, 2006
Sweta